Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term, 2001

WILLIAM T. LUTHER
Petitioner,
v
SHANE THORSEN
Respondent.

Pro se Petition For A Writ Of Certiorari
To The Court of Appeals Of Michigan

PETITION FOR WRIT OF CERTIORARI

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October 24, 2001

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QUESTIONS

Mr. Luther lost all rights to over $28,000, a loan, because of summary judgment in a state court with no 1st, 7th, or 14th Amendment protections.

1. He wonders whether any of the above Amendments protect his interests in state courts on summary judgment, since the 7th Amendment has never been applied to the states?

2. Whether state courts are 100% free to deny jury trials and grant summary judgment without discovery, since the 7th Amendment has not been applied to the states?

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Whether the Michigan Court Rule allowing summary judgment, with virtually no described rights of jury trial or Due Process of Law, violates the 7th and-or the 14th Amendments and the Constitutional right to JUSTICE?

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

Petitioner, William T. Luther, respectfully prays that a writ of certiorari issue to review the decision of the Michigan Court of Appeals on May 9, 2000, affirming summary judgment.

JURISDICTION

This Court has jurisdiction under 28 USC 1257. The Michigan Supreme Court denied leave to appeal on February 26, 2001 (App 2) and rehearing on May 29, 2001. (App 1) Extension of time was granted by Justice Stevens to and including October 26, 2001. (App 26)

RIGHTS AND RULES INVOLVED

Justice and the 7th and 14th Amendments. The Michigan Court Rule (MCR) concerning summary judgment, MCR 2.116, is reproduced in its entirety in the appendix. (App 20-25)

OPINIONS BELOW

The decision of the Court of Appeals is unpublished and reproduced here at App 3-6. The rulings of the Kent County Circuit Court are reproduced in the appendix at App 9, 10. The transcript of the summary judgment hearing is at App 11-13.

STATEMENT OF THE CASE

The real question in this case is "How easy should it be for a man, who loaned friends (partners) money in good faith, to be relieved of over $28,000?" The answer is "Very

easy! For only $20 for a motion fee and 2 false or questionable "affidavits," summary judgment can make it all yours." $28,000 is more than most bank robbers steal, the penalty for which they spend 10-30 years in prison. Some people work all year for that much money. But the Michigan Courts treat it as nothing. Mere refuse.

The next question is whether Michigan civil plaintiffs have any federal rights under the 7th Amendment or 14th Amendment protecting them from quick and deadly summary judgment? All the Michigan courts said NO. Its not a civil rights matter, so the federal courts cannot be looked to for any relief. The only relief possible is this Court.

Summary judgment was unjustly granted the Respondent when Petitioner attempted pro se to recover a loan to a partnership where the partner dealt with unexpectedly died. Petitioner was denied the right to discovery, amend the complaint, add defendants, attend the sj proceeding, oral argument, the chance to confront and cross examine witnesses, and a jury trial. In short, his only right was to complain (1st Am) and pay the fee.

Summary judgment was granted on the conflicting alleged affidavits of Defendant and another person who's statement appears to be hearsay.

The history of the case began when Petitioner pro se filed suit to recover the balance of a $33,000+ loan made in 1997 to friends he knew in a gas station business partnership consisting of Respondent, Shane Thorsen and Dave Rinzema. (Complaint) Rinzema received the loan for the partnership. A short while later a $5,000 repayment was made. Then Rinzema committed suicide. Plaintiff's suit sought to recover from the remaining partner, Respondent, Shane Thorsen. A major difficulty here is Plaintiff's best, if not only, witness, Rinzema, is dead. How can he ask him for an affidavit?

The Circuit Court Rulings on Summary Judgment

Defendant (Respondent) answered the complaint and denied a partnership. (Answer, #1,5) Simultaneously he also moved for summary judgment (sj). Respondent's notarized statement, alleged to be an affidavit, admitted there had been a partnership, but alleged it had ended in 1996 (App 14, #2,3,4) a year before the loan. But he did not produce any other documentation. He also claimed he received no benefit from the loan. Defendant also falsely claimed he was the 100% owner of the Amoco station. (App 3)

A second notarized statement, alleged to be an affidavit, but based on the signers "understanding," was submitted in support of Defendant's motion. The signer alleged knowledge of the business affairs of the deceased and admitted a partnership had existed. (App 16, #6) It also contained some conflicting statements with the first "affidavit." (1) That the lease on the gas station Defendant claimed was 100% his was held in fact by the deceased. (App 17, #11) (2) The alleged former partners maintained joint checking accounts. (App 17, #10) (3) Both "affidavits" appeared to be notarized, but neither was made under penalty of perjury. Furthermore, it appears the second affidavit, at least, was based, in part, on hearsay and was not even dated. (App 16-17) The first may contain lies, as may every affidavit.

No notice of discovery, rights or responsibilities was made to Plaintiff. No time for discovery was provided. No witnesses called. Plaintiff was not aware he had to, or could, submit affidavits and evidence to defend against summary judgment. He assumed there would be a 7th Amendment jury trial.

Defendant's attorney rescheduled the first summary judgment hearing on less than 24 hours notice, by mail and without any reasons given. Luther didn't receive the notice in time and, therefore, showed up for the hearing. No one else did.

Shortly after receiving the rescheduling notice for the second summary judgment hearing (on Nov. 13, 1998), Luther received an official notice from the court setting a "Scheduling Conference" for Nov. 30, 1998. (App 18) Whether it was mistake, confusion about the two hearings or mere oversight, Luther did not make it to the rescheduled sj hearing on Nov. 13, 1998. But summary judgment was awarded anyhow. (Transcript, App 11-13)

The judge simply noted the two affidavits and that Luther wasn't there and awarded summary judgment. Kiss $28,000 gooood byeee.

The facts that no discovery had taken place and that Luther was not in court, had not even seen the judge, did not deter the judge a bit. He granted summary judgment on only the strength of defendant's and his witness' signed and witnessed statements. (trans a) Luther wonders if he would have done the same if he had been there and the Defendant not.

Petitioner's Motion to Set Aside Summary Judgment.

Plaintiff moved to set aside sj. At that hearing, the judge stated Luther was in "default." (Set Aside hearing trans p ____) Luther argued the Defendants affidavits were in conflict, creating a fact for a jury to decide. Furthermore, Luther submitted a lease for the Amoco station showing that it was in the name of the deceased partner and not in the name of Defendant, thereby rebutting Defendant's "100% ownership" claim. However, the lease was not entered as an exhibit. (Fn Apparently no lease, or anything else, was entered as exhibits, even though the transcripts reveal the lease was offered.)

Despite the arguments and evidence, the judge refused to change his decision and told Luther he had to appeal. (App 10) (See transcript) The judge further violated state law by not giving the benefit of reasonable doubt to the "nonmovant" - Petitioner. (See below)

The Michigan Court of Appeals Rulings

On appeal by right the Court of Appeals heard oral arguments. They contended they review "de novo." (App 3) But it does not appear so from the decision, because at the end they dismiss certain of Luther's arguments contending he did not raise them below. (App 6)

Luther again submitted the lease via appendix showing Defendant was not the lease holder of the Amoco gas station as he claimed. Luther again argued that the conflicting affidavits were sufficient to defeat sj. And that the Defendant' affidavit was "untruthful" (App 4) No argument nor their combined total was able to overcome the resistance of the judges to reverse.

(Fn There is no COA transcript of oral argument. It is doubtful they would allow one. A questionable practice of the COA requires a motion and permission before they allow transcripts to be made of oral arguments. A Due Process violation? Judicial secrets?)

The COA admitted there are conflicts and contradictions in Defendants affidavits. (App 4, 6) But still they affirmed. This is "flatly contrary" to *Simler v Conner*, 372 US 221, 9 L ed 2d 691, 83 S Ct 609, (1963) ("in view of *conflicting facts presented by affidavits* and depositions . . *summary judgment was not warranted.*" L ed 2d 693)(emphasis added). *Arkansas v Sullivan*, 121 S Ct 1876, 149 L Ed 2d 994 (May, 2001)

Petitioner believed the COA decision erred in two places stating "hearing" when it meant "oral argument" and submitted a request for correction, which the clerk unjustly converted to a motion for rehearing, demanded a fee, but did not sign the letter. Thus, Luther was denied even a remote chance at rehearing. Is that a Due Process violation?

Petitioner believes the Court of Appeals judgment was in error in several respects. Other than the affidavits contradiction, he believes they violated the necessary standard of review. Luther argued this issue and others merited review by the Michigan Supreme Court. (See MSC

Lv) He argued lack of discovery. (MSC reh) He also argued there that established Partnership law was controlling and should have caused summary judgment to be awarded him. The Michigan Supreme Court denied leave. (App 2) And rehearing. (App 1)

REASONS FOR GRANTING THE PETITION

Petitioner would like to introduce the Reasons for granting the petition with recent words of the federal courts. After all, it is how the Court's rulings are applied (or not applied - most often) that is most important. Not so much what was said.

> "As the Sixth Circuit has noted, the federal courts have entered a "new era" in summary judgment practice. *Cox v Kentucky Dep't of Transp.*, 53 F.3d 146, 150 (6th Cir 1995); *Street v J.C.Bradford & Co.* 886 F2d 1472, 1478-81 (6th Cir 1989). While preserving the constitutional right of civil litigants to a trial on meritorious claims, the courts are now vigilant to weed out fanciful, malicious, and unsupported claims before trial." *Luther v Burton*, 1:00 cv 802, W.D. Mich (McKeague) (July 30, 2001) (Fn Summary judgment - granted - clarification of "confusingly commingled" motion dismiss and summary judgment denied, discovery denied - no right to sue probation officer for securing order of judge to bar Plaintiff from county and seeing children for 14 months, since no right to intra state travel.)

Petitioner is of the opinion it is the same "era" the British and Rebels were in on July 4, 1776. (See Declaration of Independence re: denial of jury trials, etc.) This "new era", contrary to the thinking of the judge above, is truthfully one of denying legitimate plaintiffs "freedom of access to the court" for "peaceful resolution of disputes," justice and jury trials. *Talamini v Allstate Ins. Co.*, 470 US 1067, 1070-1071

(1985) (Justice Stevens, et al, concurring); Constitution; 7th Am.

Furthermore, one Justice has suggested that "summary judgment procedure [could be] converted into a tool for harassment. See Louis, 750-751." Celotex, dissent, post, p 332. Is that what the People want? Does this Court want that?

I. REVIEW SHOULD BE GRANTED BECAUSE OF THE GREAT INJUSTICE SUMMAR' JUDGMENT CAN IMPOSE NATIONWIDE AND TO DECIDE IF THE SUPREME COURT HAS ANY CONTROL OVER IT.

Review should be granted because of the nationwide injustice of summary judgment and the fact that it is Judge made law having inherent weaknesses and disabilities. Summary judgment is Judge made law in Michigan. Over half of the rules and rights are buried deep in case law, which the courts have created one by one over many years. But is that fair or just? No- Judge made law is not the best. Like the preclusion doctrines, most Judge made law is defensive. Summary judgment, while beginning as a plaintiff's way to avoid trial, is now exclusively a defendants tool to avoid trial. If you lose, you appeal by right with de novo review. That's all good for the judicial business and the lawyer P.C.'s but it is not good for the public's perception of justice.

The injustice delay complexity and cost of appeals weed out many litigant plaintiffs Jury trials, while viewed as expensive by the judges , are cheap compared to appeals for the pro-se plaintiffs. Most of the rights and rulings are hidden deep in the caverns of case law, summary judgment is especially unfair and unjust to prose plaintiffs. This is such a case. If summary judgment is as constitutional as the 7th. Amendment jury trial, there has to be nationwide standards upon which to judge its constitutionality. Presently there are none. Therefore anything a State judge does to a plaintiff in summary judgment is apparently

Constitutional, even if totally unjust Petitioner asserts that at the pinnacle of these standards there should be properly legislated statutes to prevent dark caverns of rights no one knows of. Secondly, if there are not statutes, such as the present case, that a very high standard of review (like close scrutiny) be applied to judge made law summary judgment, based on the 7th. Amendment right and 14th, amendment due process, equal protection and justice.

Turning to the present case, Luther was denied numerous rights of trial by summary judgment - confront and cross examine witnesses against him, provide witnesses supporting his case! But petitioner was also denied summary judgment rights - right to prejudgment discovery (*Anderson v Liberty Lobby, Inc.*, 477 US 242, 257 (1986) ; *Celotex Corp. v Catrett*, 477 US 317 , 326 (1986)) right to a previously scheduled scheduling conference, (App.) 18, where he may have been able to find out from the judge what his right and duties were before summary judgment ditched his case and all he could do was appeal. Secondly, this court needs to address appellate review standards of summary judgment. On summary judgment review of federal cases, this court has said that benefit of reasonable doubt goes to the nonmovant(cite). That is minimally fair- considering the right of jury trial where nonjudges decide what's fair. But in this case the court of appeals has ruled in effect that there is reasonable doubt, based on the conflicting affidavits (App4,6) but yet affirms judgment for the defendant. If the court's ruling in Anderson and Celotex is the nationwide standard - Luther should have won a reversal, at least, on appeal.

But, more importantly, Luther should have defeated summary judgment at the trial court, since it is evident from the hearing transcript of Luther's motion to set aside summary judgment, that he read the issue of the conflicting affidavits. Any reasonable, independent, inquisitive thinking judge could see that on their factual face, of the affidavits themselves. (App 14-17). Luther after having

summary judgment "take" from him the right to recover $28,000.00 has concerns greater than those of Justice Brennan(US 267 & 268) dissent Anderson.

II. THE NATIONWIDE 1,ST 7TH AND 14TH RIGHTS OF THE PEOPLE ARE BEING DENIED BY UNKNOWN OR WELL HIDDEN STANDARDS OF REVIEW AND DECISION WHEN NOT APPLIED BY THE LOWER COURTS AND APPELLATE COURTS..

The Court of Appeals utilized an erroneous standard of review in deciding summary judgment de novo for the Defendant. Plus, the Michigan Supreme Court, when confronted with the error, refused to review or reverse.

In *Sewell v Southfield P.S.*, 456 Mich 670 (1998), a unanimous Court reversed the Court of Appeals. The Court provided the following standard of review.

> STANDARD OF REVIEW
> "We review a motion for summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Groncki v Detroit Edison Co.*, 453 Mich 644, 649; 557 NW2d 289 (1996). Defendant's motion is predicated on MCR 2.116(C)(7), which provides for summary disposition when a claim is barred by an immunity granted by law. In reviewing such a motion, a court must consider all documentary evidence filed or submitted by the parties. MCR 2.116(G)(5); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). However, "the contents of the complaint must be accepted as true unless specially contradicted by the affidavits or other appropriate documentation submitted by the movant." Id.at 434, n 6." (emphasis added) Id. at 674.

In this case the Defendant, before the MSC Court (see Brief) and the Court of Appeals, contended that the Plaintiff's complaint was "mere conjecture". And Defendant attempted to prove the complaint wrong by filing a false

and misleading affidavit. Thus the contents of the complaint was NOT "contradicted".

Secondly, in Ferrario v Bd of Ed Escanaba PS, 426 Mich 353, 395 NW2d 195 (1986) the Court reiterated a further summary judgment requirement.

> "The courts are liberal in finding that a "genuine issue" does indeed exist. Rizzo v Kretschmer, 389 Mich 383; 207 NW2d 316 (1973). The evidence presented should be interpreted to give the benefit of any reasonable doubt to the opposing party, i.e., any evidence should be viewed in a light most favorable to the nonmoving party." Id. at 370.

The courts were not "liberal" in this pro se case. In fact they were everything but "liberal". Can it be said in this case that there is no reasonable doubt that there was no partnership? NO! Absolutely not.

The affidavit of Grooters, maybe a less biased witness than the Defendant, states that the alleged former partners continued to have joint checking accounts. (See App 2 at 10) Isn't that evidence of partnership? A reasonable person would say it is.

Even the Court of Appeals had reasonable doubts as evidenced by their decision.

> To the extent that there was a contradiction or factual question concerning whether Rinzema or defendant was the title owner of the Shawmut Hills station, we do not believe this issue is material to a determination of whether defendant owes plaintiff money. (App 4)

> "While we agree that the affidavit of Grooters weakens defendant's assertion that the Amoco station was licensed in the his name, we do not find that this contradiction sufficiently demonstrates that

defendant's affidavit was not "well grounded" in fact." (App 6)

Luther argued those affidavits were not conclusive that there was no partnership, as the Defendant claimed. He argued these facts both before the Court of Appeals and lower court. Since the evidence is not conclusive, reasonable doubt exists and summary judgment should not have been granted to Defendant.

If the 7th Am. Applied, Luther could win on this point with *Simler v Conner*, 372 US 221, 9 L ed 2d 691, 83 S Ct 609, (1963) quoted above.

The Court of Appeals erred failing to view the evidence in the light most favorable to the nonmovant.

"We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although defendants brought their motions for summary disposition pursuant to MCR 2.116(C)(8), the parties and the trial court relied on documentary evidence beyond the pleadings. Therefore, we will treat the motions as having been granted pursuant to MCR 2.116(C)(10) and examine the pleadings and the documents. *Travis v Dreis & Krump Mfg Co*, 453 Mich. 149, 183-184, 551 N.W.2d 132 (Boyle, J.) (1996); *Glittenberg v Doughboy Recreational Industries, Inc*, 436 Mich. 673, 681, 462 N.W.2d 348 (Griffin, J.) (1990). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra; Radtke v Everett*, 442 Mich. 368, 374; 501 N.W.2d 155 (1993). A court must consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Ritchie-Gamester v Berkley*, 461 Mich. 73, 76; 597 N.W.2d 517 (1999);

Rollert v Dep't of Civil Service, 228 Mich. App. 534, 536; 579 N.W.2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich. App. 598, 602; 601 N.W.2d 172 (1999)." *Kefgen v Davidson, et al*, 241 Mich. App. 611, 616-617; 617 NW2d 351 (2000) (emphasis added)

The Court of Appeals clearly erred in not viewing the affidavits "in a light most favorable to the nonmoving party" and not giving the benefit of reasonable doubt to the nonmovant - Luther.

III. UNDER MICHIGAN PARTNERSHIP LAW SUMMARY JUDGMENT SHOULD NEVER HAVE BEEN GRANTED DEFENDANT AND, INSTEAD, SHOULD HAVE BEEN GRANTED PLAINTIFF. IT SHOULD BE GRANTED NOW UNDER THE SUPREMACY CLAUSE, EQUAL PROTECTION, DUE PROCESS AND 28 USC 1652.

Petitioner raised in major part the following argument in the Michigan Supreme Court on Motion for Rehearing. (See MSC Mot Reh. p 3-7) (Reh Den, see App 1)

Rehearing has a significant purpose and is a valid procedure. Atchison, T & S F R Co. v United States, 284 US 248, 259-262, 76 L Ed 280 (1931); Cahill v New York N.H.& H.R. Co., 351 US 183, 100 L ed 1075, 1079, 76 S Ct 758 (1955); US v Hastings, 461 US 499, 76 L Ed 2d 96, 103 S Ct 1974 (1983); A second rehearing to rectify manifest injustice is also possible. Hormel v Helvering, 312 US 552, 556-559, 85 L ed 1037, 1040-1042, 61 S Ct 719. See also In Re Suresh "C" Shah, 859 F.2d 1463 (1988, 10th Cir) quoting In re X-Cel, Inc. (citation omitted) providing substantial reasons for rehearing.

It has been held that the question of the existence of a partnership is a mingled problem of law and fact. Swanson v Siem, 12 P2d 1053, 124 Cal App 519 (1932).

Petitioner first argues that summary judgment should not be granted where there is a mixed question of

law and fact, as here. Furthermore, the facts are not clear beyond a reasonable doubt. (See the standard of review.)

The issue in this case is, was there a partnership in fact or effect by law at the time of the loan under partnership law?

The Facts.

Plaintiff's complaint contends Defendant and Dave Rinzema were partners and that he loaned them the money Sept. 6, 1997. (See MSC Lv, App 1, #2)

Defendant admitted that he and Rinzema were partners previously. (Thorsen, Affidavit at App 14) But Def. contends the partnership ended before the Sept. 6, 1997 loan. (# 4)

But Defendant offered no non-affidavit evidence. Not one document was submitted proving the partnership ended. Maybe it didn't. Maybe Defendant lied to save himself $28,000. Would people lie for that kind of money? Since we know they kill for less than that, it is obvious some would lie for it.

Plaintiff offered the signed and dated Amoco station lease, that named Rinzema, (the deceased) only, as the lessee at the motion to set aside summary judgment hearing. (See Trans, p) (lease appended to MSC lv, App 3) This lease is for the "Amoco station" that Defendant falsely claimed that he was the "100%" owner of. Luther clearly rebutted Defendant's "100%" claim with the lease of the Amoco Station to Dave Rinzema dated November 29, 1994. It specifically leases the Station to Rinzema from December 1, 1994 to November 30th 1997 at a cost of $4,706 per month. No evidence has been entered to prove any change in the ownership and/or obligations of this lease. And the lease clearly does not mention Shane Thorsen, the Defendant.

In fact the lease proves Dave Rinsema was 100% responsible for the lease payments, at least, on what Thorsen claimed was 100% his station. And it clearly refutes the claim by Thorsen that he received no "benefit" from the

money and that it did not pay any of his Amoco Station "debts" or "expenses". (App 15 #8 & 9)

As can be seen this lease thoroughly contradicts and disproves Defendant's claim that he, "Shane Thorsen retained 100% ownership of the Shawmut Hills Amoco Station . . " (App 14, #3) Furthermore, it raises the issue of perjury via affidavit.

The Law Of Partnership

An interesting and applicable case is General Tire v Noble, 222 Mich 545, 193 NW 229 (1923). There virtually the same question of liability for loans was submitted to a jury. The question being whether or not the creditor had knowledge of the change in partnership such that liability would be removed from one of the partners. The jury found that there was insufficient notice and awarded the Plaintiff what was owed plus interest. The Supreme Court properly upheld the jury's verdict.

> "MCL 449.30; MSA 20.30, which is identical to section 30 of the Uniform Partnership Act, provides: `On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.'" *Commonwealth Capital Investment Corp. v McElmurry*, 102 Mich App 536, 539; 302 NW 2d 222 (1980)

The Michigan Court of Appeals in *Commonwealth*, (Id. 539) also quoted *Englestein v Mackie*, 35 Ill App 276, 288-299; 182 NE2d 351, 357-358 (1962), where the Illinois Court of Appeals said the following about section 30 of the Uniform Partnership Act:

> "The terms `dissolution' and `termination', as employed in the Partnership Act are not synonyms and, as used, have different meanings. Dissolution does not terminate the partnership and does not end

> completely the authority of the partners. The order of events is: (1) dissolution; (2) winding up; and (3) termination. Termination extinguishes their authority. It is the ultimate result of the winding up and occurs at the conclusion of the wind up."

The *Commonwealth, Id.* (at 539) Court then concluded that:

> "The "winding up of partnership affairs" includes the satisfaction of debts against it. Consequently, it is our opinion that a partnership may be sued in its own name following dissolution, but prior to termination."

MCL 449.15; MSA 20.15 provides that all partners are jointly liable for the debts and obligations of the partnership. Furthermore, MCL 449.36(1); MSA 20.36(1) provides that the dissolution of the partnership does not discharge the existing liability of any partner.

In *Security State Bank v Nelson*, 214 NW51, 171 Minn 332 (1927) the Court held that one who extends credit to the partnership prior to the dissolution and has no knowledge or notice of the dissolution may recover from the retiring partner (in this case the remaining partner).

In Credit Bureaus of Merced County, Inc. v Shipman, 334 P2d 1036, 167 Cal App 2d 673 (1959) it was held a retiring partner would not be liable for debts if the creditor had notice of the dissolution.

Petitioner-Plaintiff, the creditor here, did not receive any notice of dissolution. There is no evidence entered that he did. Therefore, summary judgment should have been awarded to Luther.

The burden of proof is on the partner attempting to avoid liability to prove that notice of dissolution was provided to the creditor. *Johnson Tire Co. v Maddux*, 221 Sw2d 948; 188 Utah 626 (1949), *Credit Bureau, supra.*

Furthermore, lack of knowledge by Shane Thorsen of his partner's acts does not relieve him from liability.

Grosberg v Michigan Nat'l Bank, 420 Mich 707, 716; 362 NW2d 715 (1985) stated:

> "[W]e find that sec 9 of the Uniform Partnership Act applies regardless of the bank's lack of knowledge of the partnership relationship, and that any act of Goldman within the scope of his implied authority as a partner necessarily bound his co-partner Grosberg under that provision." (court's emphasis)

Luther never received any notice of dissolution of the partnership and he was friends with them. And Defendant never proved that he did. Furthermore, even if he had, the affairs of the partnership were continuing. Therefore, since Def. did not meet his burden of proof where it is mandated by law, summary judgment should have been denied. And, considering Partnership law, summary judgment should have been entered in Luther's favor, since no other facts are in dispute. Under this partnership law summary judgment should not have been granted to Defendant for certain.

The Partnership's Joint Checking Account

The joint checking account is sufficient evidence of partnership to preclude summary judgment and to award it in nonmovants favor.

One of the two affidavits submitted by Defendant for summary judgment, that of Henry Grooters, attested to continuing joint checking accounts after the partnership allegedly had ended. (App 17 #10)

In *Grosberg v Michigan Nat'l Bank*, 420 Mich 707; 362 NW2d 715 (1985) the Court held that evidence of a joint checking account was sufficient evidence of an implied partnership to decide the issues under partnership laws. Id. at 720.

Here it should clearly have been enough evidence of partnership to defeat summary judgment.

The Movant Argued Falsely He Received No Benefit From the Loan

The Defendant's argument of "no benefit" is immaterial, if not wrong. The Court of Appeals in a partnership case quoted with approval the following applicable comments:

> n7 "If the property is a kind which has a record title (such as real estate, motor vehicles or stock certificates) or is carried in a given name (like a checking or savings account), there is a presumption of some vigor that the named owner is the beneficial owner. However, the presumption is not symmetrical. Record title in the firm is much more indicative of firm ownership than is individual title of individual ownership. The explanation for the lopsided presumption is easy. Title would rarely be placed in the partnership unless the ownership were intended to be there too. But title is often taken in individual names when ownership by the firm is intended, in anticipation of real or imagined difficulties in later transferring good title to a buyer." Crane and Bromberg, [Law of] Partnership, sec. 37, p 209." *Matthews v Wosek*, 44 Mich App 706, 715; 205 NW 2d 813 (1973) (emphasis added)

See also the *Grosberg, supra*, quoted above. See also *Johnson v Hogan*, 158 Mich 635, 123 NW 891 (1909) (land in partners name may be partnership property though not purchased with partnership funds.)

Accepting these authorities, Luther contends the Defendant is attempting to deceive by contending in his motion for summary judgment that he did not receive any benefit from the loan when his name is on the joint checking account with the deceased, Dave Rinzema. (See MSC lv,

App 2 at 10) Furthermore, Petitioner contends it is a frivolous and bad faith argument under MCR 2.116(F).

In summary Petitioner should have won on summary judgment instead of losing.

CONCLUSION

Mr. Luther therefore respectfully requests that the petition for writ of certiorari be granted.

Date: October 24, 2001

William T. Luther
119 N. Centennial
Zeeland, Michigan 49464
616-617-2424 or 772-2398

Michigan Supreme Court
Lansing, Michigan
Maura Corrigan, Chief Justice, Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman, Justices

Order
Entered: May 29, 2001
117631 (63)

WILLIAM T. LUTHER,
Plaintiff-Appellant

V

SC: 117631
COA: 217 41 8
Kent CC: 98-005636-CZ

SHANE THORSEN,
Defendant-Appellee.

On order of the Court, the motion for reconsideration of this Court's order of February 26, 2001, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 29, 2001 /s/ Corbin R. Davis, Clerk

Michigan Supreme Court
Lansing, Michigan
Maura Corrigan, Chief Justice, Michael F. Cavanagh,
Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor,
Robert P. Young, Jr., Stephen J. Markman, Justices

Order
Entered: February 26, 2001
117631 (63)

WILLIAM T. LUTHER,
Plaintiff-Appellant

V

SC: 117631
COA: 217 41 8
Kent CC: 98-005636-CZ

SHANE THORSEN,
Defendant-Appellee.

On order of the Court, the application for leave to appeal from the May 9, 2000 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.
C0220 Feb. 26, 2001 /s/ Corbin R. Davis, Clerk

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM T. LUTHER,
Plaintiff-Appellant,

v

SHANE THORSEN
Defendant-Appellee.

UNPUBLISHED
May 9, 2000
No. 217418
Kent Circuit Court
LC No. 98-005636-CZ

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition, as well as the trial court order denying plaintiff s motion to set aside summary disposition. Plaintiff claimed that defendant owed him over $28,000 based on a loan allegedly made to defendant and Dave Rinzema, defendant's former partner. We affirm.

Plaintiff first contends that the trial court erred by granting defendant's motion for summary disposition. We review motions for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In defending against a summary disposition motion brought pursuant to MCR 2.116(C)(10), the nonmovant may not "rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999) (quoting MCR 2.116(G)(4)). -if the proffered evidence does not establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. Id at 120.

Plaintiff contends that there was a genuine issue of fact regarding whether defendant derived a "benefit from the $33,365.55 loan to the East Beltline Marathon Station in September of 1997." In his affidavit, however, defendant

attested that he received no benefit from the money that plaintiff loaned to Dave Rinzema. Plaintiff offered no evidence to either refute defendant's denial or support an assertion that defendant directly or indirectly derived any benefit. Accordingly, the trial court correctly determined that there was no material question of fact regarding this issue. (-1-)

Plaintiff also argued during the hearing that there was a factual issue created by the affidavits of defendant and Henry Grooters. Plaintiff claims that defendant's affidavit untruthfully asserted that "the Shawmut Hills Amoco Station [I]) licensed in the name of [defendant]," and that the falsity of that assertion is shown by Grooters' affidavit wherein Grooters claimed that the lease to the Amoco station was not transferred to defendant because the transfer would have required Rinzema to pay a sales tax. Apparently, plaintiff means to suggest that because the Amoco station was not transferred to defendant, he and Rinzema were still partners and thus defendant was liable for the debts of the on-going partnership. However, both defendant and Grooters agreed that the partnership ended before Rinzema incurred the debt to plaintiff, and they also agreed that defendant owned and operated the Shawmut Hills Amoco Station. Plaintiff failed to "go beyond [his] pleadings to set forth specific facts showing that a genuine issue of material fact exists" *Quinto v Cross & Peters Co*, 451 Mich358, 362; 547 NW2d 314 (1996). To the extent that there was a contradiction or factual question concerning whether Rinzema or defendant was the title owner of the Shawmut Hills station, we do not believe that this issue is material to a determination of whether defendant owes plaintiff money. Consequently, we conclude that defendant failed to demonstrate the existence of any issue of material fact.

Moreover, plaintiff's complaint does not set forth any legal theory supporting his assertion that defendant owes him money. Although plaintiff contends that Rinzema and

defendant were partners at the time of the loan in 1997, the affidavits of defendant and Grooters indicate that the partnership ended in 1996. In other words, plaintiff offered no substantively admissible evidence beyond the allegations in his pleading to establish that defendant owed him money. *Maiden, supra* at 121.

Although not expressly stated on the record, plaintiff's allegations suggest that he relies on an implied contract theory. Generally, an implied contract may be found "where there is a receipt of a benefit by a defendant from a plaintiff and retention of the benefit is inequitable, absent reasonable compensation.". *In re Lewis Estate,* 168 Mich App 70, 74-;423 NW2d 600 (1 988). In his affidavit, defendant attested that he never received any benefit from the money that plaintiff loaned to Rinzema. As stated above, plaintiff did not present any evidence to rebut that assertion; therefore, we conclude that to the extent that plaintiff s pleadings suggest a theory of implied contract, defendant was entitled to judgment on that theory. Thus, we also conclude that the trial court did not err by granting defendant's motion for summary disposition or denying plaintiff's motion to set aside summary disposition.

Plaintiff further argues that the trial court should have imposed penalties or sanctions on defendant under the court rules for making a "false statement" in his affidavit. Specifically, plaintiff contends that the trial court should have imposed sanctions or penalties because defendant's affidavit stated that he "retained 100% ownership of the Shawmut Hills Amoco station," whereas the Grooters affidavit indicated that Rinzema did not transfer the Amoco lease for the Shawmut Hills Amoco station to defendant because Rinzema wanted to avoid a sales tax liability which would have accrued upon transfer. Plaintiff suggested during the hearing that defendant had committed perjury in making his statement. However, the trial court did not impose any sanctions or penalties upon defendant.

We review a trial court's decision regarding whether a party or attorney violated MCR 2.114(D) for clear error. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999). A decision is "clearly erroneous," if the reviewing court is left "With a definite and firm conviction that a mistake has been made." *Jackson Co, supra* at 91-92.

Although plaintiff does not specify which subsection of MCR 2.114(D) defendant violated, we find subsection (2) to be the most applicable alternative because it states that the signature of a party to a document certifies that "to the best of his or her knowledge, information, and belief, formed after a reasonable inquiry, the document is well grounded in fact." No evidence was presented, however, suggesting that Rinzema's alleged title ownership of the lease for the station was relevant to whether defendant derived a benefit from plaintiff's loan to Rinzema. We agree that the affidavit of Grooters weakens defendant's assertion that the Amoco station was licensed in his name, we do not find that this contradiction sufficiently demonstrates that defendant's affidavit was not "well grounded" in fact. In other words, we are not left with a "definite and firm conviction that a mistake has been made." *Jackson Co, supra at* 91-92. Therefore, we conclude that the trial court did not err in refusing to impose sanctions or penalties upon defendant under the court rules.

We note that plaintiff raised several legal theories in his brief on appeal that were not pleaded or argued below. These theories have not been preserved for appeal, *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993), and we therefore decline to address them. Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Donald S. Owens (-3-)

State of Michigan
COURT OF APPEALS
LANSING
(list of judges omitted)

To attorneys of record:

Enclosed with this letter is the decision and opinion in the entitled matter.

Under MCR 7.215(A), "per curiam" or "memorandum" opinions are not published unless the majority of the judges of the panel deciding the case directs the reporter to do so. In those cases, the words "For Publication" appear on the face of the opinion. Opinions not designated for publication at the time of release are printed on pink paper and the word "Unpublished" appears on the face.

Under MCR 7.215(D), this opinion is the judgment of the Court of Appeals. All time periods for further action under the rules will ran from the date printed on the opinion. See MCR 7.215 (E), (G).

I hereby certify that the annexed is a true and correct copy of the opinion filed in the record of the Court of Appeals in the entitled matter and that the date thereon is the actual date of filing.

CLG/las
Encl.
Cc: Trial Judge or Agency
Sincerely,
Carl L Gromek Chief Clerk

cc: Trial Judge or Agency

LANSING OFFICE 109 WEST MICHIGAN AVENUE P.O. BOX 30022 LANSING, MICHIGAN 48909-7522 (517) 373-0786 (other court addresses omitted)

Court of Appeals, State of Michigan

ORDER

William T Luther v Shane Thorsen

Docket No. 217418
LC No. 98-005636-CZ
Hilda R. Gage
Presiding Judge
Patrick M. Meter
Donald S. Owens
Judges

The Court orders that the motion for rehearing is DENIED.

/s/ Hilda R. Gage
Presiding Judge

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on Date August 18, 2000
Chief Clerk /s/ Carl L. Gromek

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

WILLLAM T. LUTHER,
Plaintiff,
V Case No. 98-05636-CZ Hon. Paul J. Sullivan
SHANE THORSEN
Defendant.

William T. Luther In Pro Per
201 West Fulton
Grand Rapids, MI 49503 (616) 451-9499

Joseph P. VanderVeen (P33585)
STRAIN, MURPHY & VANDER WAL, P.C., 2900 East Beltline Avenue, N.E. Grand Rapids, Michigan 49525 (616) 364-2900

At a session of said Court, held in the Kent County Circuit Court, Grand Rapids, Michigan, County of Kent, State of Michigan on November 13, 1998.
PRESENT HON. PAUL J. SULLIVAN Circuit Court Judge

ORDER

This matter having come on to be heard upon Defendant's Motion for Summary Disposition, briefs having been filed and oral argument heard;

IT IS HEREBY ORDERED and adjudged that Defendant's Motion for Summary Disposition is hereby granted and Plaintiffs Complaint is dismissed with prejudice and without costs.
Examined, Entered & Countersigned
/s/ Paul J. Sullivan
Hon./Paul J. Sullivan Circuit Court Judge
ATTEST: True copy /s/Sandy Boger
ORDER ENTERED JOURNAL NO. 1428 page ???

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF KENT

WILLIAM T. LUTHER,
Plaintiff,
v

CASE NO.: 98- 05-63-cz
HON. PAUL J. SULLIVAN

SHANE THORSEN.
Defendant.

Larry D. Vander Wal (P23452) Strain, Murphy & Vander Wal, P.C. Attorneys for Defendant 2900 E. Beltline, N.E Grand Rapids, MI 49525 (616) 364-2900

William T. Luther In Pro Per
2816 Three Mile Road Grand Rapids, MI 49503
(616) 451-9499

ORDER DENYING PLAINTIFF'S MOTION TO SET SUMMARY DISPOSITION

At a session of said court held in the, City of Grand Rapid, County of Kent, State of Michigan, this 15th day of Jan. 1999.

PRESENT: HON. PAUL J. SULLIVAN Circuit Court Judge

This matter having come on to be heard upon Plaintiff s Motion to Set Aside Order for Summary Disposition, motion and response having been filed and oral argument heard in the matter, and the Court being duly advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Motion to Set Aside Order for Summary Disposition and dismissal of this case is hereby denied.

/s/ Paul J. Sullivan
Hon. Paul J. Sullivan

Examined, counter-signed & entered: (no signature)
Deputy County Clerk Attest: A true copy (no signature)
ENTERED JOURNAL NO. 1437 page 1161

STATE OF MICHIGAN
IN THE 17TH CIRCUIT COURT FOR THE
COUNTY OF KENT

WILLIAM LUTHER,
Plaintiff,

Vs No. 98-05636-CZ
SHANE THORSEN,
Defendant.

MOTION FOR SUMMARY DISPOSITION
BEFORE THE HONORABLE PAUL J. SULLIVAN,
CIRCUIT JUDGE
Grand Rapids, Michigan - Friday, November 13, 1998

APPEARANCES:

For the Defendant:
MR. LARRY D. VANDER WAL (P23452) 2900 East Beltline
Grand Rapids, MI (616) 364-2900

Recorded and Transcribed by:
Denise L. Jamba, CER 0786 Certified Electronic Recorder

JAMBA RECORDING SERVICES 6442 Egypt Valley
Rockford, MI 49341 (616) 874-7346
(page 1)
TABLE OF CONTENTS
WITNESSES: PAGE
None
EXHIBITS: IDENTIFIED RECEIVED
None
(end page 2)

Grand Rapids, Michigan Friday,
November 13,1998 - 3:40 p.m.

MR. VANDER WAL: Good afternoon, your Honor.
THE COURT: Good afternoon. How are you, --
MR. VANDER WAL: Good.
THR COURT: -- Mr. VanderWal? It's good to see you. Sir you are?
THE DEFENDANT: Shane Thorsen.
THE COURT: You're Shane Thorsen. Is --
MR. VANDER WAL; He's my client, your Honor.
THE COURT: Is William Luther here in the courtroom or anyone on his behalf?

This is a motion for summary disposition filed by the Defendant. Mr.VanderWal appears on behalf of the Defendant. The matter was noticed on for a hearing today, I believe at 2:30 p.m. It is now 3:40 p.m. The plaintiff has failed to appear. And I've read what you have -- what you've filed here, what Mr. Vander Veen (sic) has filed here. Anything further you want to say, Mr. Vander Wal?
MR. VANDER WAL: It's a sad situation, but it's - there's just no evidence that Mr.Thorsen had anything to do with this money. We'd ask that the Court grant our motion. I've prepared a proposed order.
THE COURT: The defendant seeks summary (end page 3) disposition pursuant to MCR 2.116 (C)(10) and has attached to his motion two affidavits, one by Mr. Thorsen himself and one by someone who had done some accounting work for him. The name, I guess, is Henry Grooters. The essence of the -- of the affidavits is that the money loaned to -- allegedly loaned to a Mr . -
MR. VANDER WAL; Rinzema

THE COURT: -- Rinsema, and in this case, I guess allegedly also loaned to Mr. Thorsen for some business purposes was actually money that went to Mr. Rinsema in his own behalf and without any involvement of Mr. Thorsen. It's stated

here through the affidavits that Mr. Thorsen was not aware of the loans, that at the time of the loans, that the business that he and Mr. Rinsema had been involved in prior to that time had, in fact, been split up and that he was not involved with Mr. Rinsema in business activity at that point. And the Court would be prepared to hear anything the Plaintiff might have to say, but the Plaintiff is required under the court rules to provide some responsive affidavit, deposition testimony, or something to suggest that there is a factual issue that remains. The Plaintiff having failed to do that, the Court sees no reason not to grant the relief sought by Defendant, and, accordingly, Defendant's motion for summary disposition ought be and is hereby granted, and I am at this point in (end page 4) time signing the order that has just been presented to the Court to effectuate that. Anything further, Mr. VanderWal?
MR. VANDER WAL: Thank you, your Honor.
THE COURT: Thank you.
(At 3:47 p.m., motion concluded)
(end page 5)

STATE OF MICHIGAN)
) ss
COUNTY OF KENT)

I, Denise L. Jamba, CER 0786, do hereby certify that I recorded the foregoing proceedings before the HONORABLE PAUL J. SULLIVAN, Judge of the 17th Circuit Court for the County of Kent, Grand Rapids, Michigan; that the same was reduced to typewritten form, and that the attached 6 pages constitute a full, true and accurate transcript, to the best of my ability.
Date: August 13, 2001 /s/ Denise L. Jamba
Denise L. Jamba,CER 0786 Jamba Recording Services 6442 Egypt Valley
Rockford, MI 49341 (616) 874-7346
(end page 6)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF KENT

WILLIAM T. LUTHER,
Plaintiff,

Case No. 98-05636-CZ
Hon. Paul J. Sullivan

VS.
SHANE THORSEN,
Defendant,

William T. Luther In Pro Per
201 West Fulton Grand Rapids, MI 49503
(616) 451-9499

Joseph P. Vander Veen (P33585)
LINSEY, STRAIN & WORSFOLD, P.C.
Attorneys for Defendant
Michigan National Bank Bldg., Suite 1200 77 Monroe Center,
N.W., Grand Rapids, Michigan 49503 (616) 456-1661

AFFIDAVIT

NOW COMES Affiant Shane Thorsen, and for his Affidavit states as follows:

1. That the Affiant is the named Defendant in the above entitled caption.

2. That on or about August 2,1991, David Rinzema, Darrel Herweyer, and Shane Thorsen entered into a partnership agreement known as Shawmut Hills Partners for the purpose of owning and operating the Shawmut Hills Amoco Gas Station.

3. Between 1991 and January 1, 1996, the Affiant and David Rinzema jointly operated both the Shawmut Hills Amoco Gas Station and the East Beltline Marathon Station. On January 1, 1996, David Rinzema and Shane Thorsen changed their business relationship and divided assets previously owned by Shawmut Hills Partners so that Shane Thorsen atttained 100% ownership of the Shawmut Hills

Amoco Station and David Rinzema retained 100% ownership of the East Beltline Marathon Station.

4. Attached as Exhibit A is the Affidavit of Henry Grooters, the tax accountant who provided accounting services for the two gas stations, which verifies the change of business relationship between Dave Rinzema and Shane Thorsen as of January 1, 1996.

5. That after January 1, 1996, David Rinzema had all licenses for the East Beltline Marathon Gas Station in his name and all tax returns were filed in his name.

6. The East Beltline Marathon Station was never licensed in the name of Shane Thorsen.-

7. That all monies allegedly borrowed from William Luther was for the sole purpose of funding debts and expenses of the East Beltline Marathon Station which was solely in the ownership and name of Dave Rinzema.

8. That Shane Thorsen was not aware of any borrowing of money by Dave Rinzema from William Luther until after the fact and no monies borrowed by Dave Rinzema from William Luther were used in any way to benefit Thorsen or to pay the debts and expenses of the Shawmut Hills Amoco Station licensed in the name of Shane Thorsen.

9. At no time did Shane Thorsen benefit from the borrowing of money by David Rinzema from William Luther.

10. That any claim of William Luther lies against the estate of Dave Rinzema against which William Luther has already filed a claim.

Subscribed to and sworn to before me a Notary Public this 11 th day of September, 1998.

/s/ Shane Thorsen

Notary Public Kent County, Michigan

My commission Expires 10/31/01

AFFIDAVIT OF HENRY GROOTERS

STATE OF MICHIGAN
COUNTY OF KENT

Henry Grooters, being duly sworn, deposes and says:

1. I am a tax accountant, doing business under the name of Grooters Accounting Service, Wyoming, Michigan 49548.

2. I was the accountant for David Ray Rinzema for approximately 25 years before his death in November, 1997.

3. For the last few years I have also been the accountant for Shane Thorsen.

4. Mr. David Rinzema was the owner of a Marathon station and an Amoco station. The Amoco station was located at 2035 Lake Michigan Drive, Grand Rapids, Michigan 49504-4742.

5. In the years prior to his death, David Ray Rinzema had financial difficulties and I understood from David Rinzema that he was given money by Shane Thorsen.

6. It is my understanding that prior to 1996, David Rinzema and ShaneThorsen operated the Amoco station and and a Marathon station as a business in which they both had an interest.

7. In 1996, it, is my understanding and belief that David Rinzema and Shane Thorsen changed their business relationship whereby David Rinzema retained ownership of the Marathon station and Shane Thorsen became the owner of the Amoco station, known as, Shawmut Hills Amoco, 2035 Lake Michigan Drive, NW, Grand Rapids, Michigan 49504.

8. It is my understanding that with the full knowledge and acquienscence of David Rinzema, Shane Thorsen transferred various licenses, such as the sale tax license and the retail dealer's diesel fuel motor license to his name for the Shawmut Hills Amoco station.

9. For the tax year ending in December, 1996, Shane Thorsen treated the Shamut Hills Amoco station as his business and filed a Schedule C for that business on his federal tax return. It is my understanding that David Rinzema did not claim the Shawmut Hills Amoco station on his return for 1996.

10. It is my understanding that even though in 1996 Shane Thorsen acquired David Rinzema's ownership interest in the Shawmut Hills Amoco station, David Rinzema and Shane Thorsen continued to engage in some joint activities regarding their respective businesses, such as keeping each other's name on checking accounts. However, it is my understanding that the ownership and operation of the Marathon station rested with David Rinzema, and the ownership and operation of the Shawmut Hills station rested with Shane Thorsen.

11. It is my understanding and recollection that David Rinzema did not transfer the Amoco lease for the Shawmut Hills Amoco station to Shane Thorsen, as that would have required David Rinzema to pay some sales taxes which would be due upon the transfer of the lease to someone else.

12. Further deponent sayeth not .

Subscribed and sworn to before me this
(NO DATE RECORDED) day of April, 1998

(signature looks like RL Mat????)
[stamp R.L. Mat?????]
My Commission Expires: April 21, 2000

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF KENT
333 MONROE NW, GRAND RAPIDS, MI 49503

Plaintiff(s)
WILLIAM T LUTHER

VS. CASE NUMBER: 98-0566 CZ
Defendant(s) SHANE THORSEN
TO:
WILLIAM LUTHER
PRO PER
201 W FULTON GRAND RAPIDS MI 49503-

JOSEPH P VANDERVEEN
1200 MICHIGAN NTL BANK BLDG 77 MONROE CENTER
NW GRAND RAPIDS MI 49503-

PLEASE BE ADVISED THAT THE ABOVE ENTITLED
CAUSE HAS BEEN SET FOR SCHEDULING
CONFERENCE ON: NOVEMBER 30, 1998 @ 4:00 PM
BEFORE THE HONORABLE PAUL J SULLIVAN
Courtroom : 204

If the out of town attorney on this scheduling conference desires to conduct the conference by telephone at their ow expense, please contact the Judge's secretary at least 48 hours in advance of the conference and arrangements can be made.

PROOF OF SERVICE
I do hereby certify and return that I served a copy of the above notice upon each attorney of record as appearing above by placing a copy of said notice in a sealed envelope, addressed to each, and giving said envelope to the Professional Courier Service for delivery or with full

postage prepaid thereon and placing said envelope in the United States Mail at Grand Rapids, Michigan on Friday, October 16, 1998

(R.P) DEB LOVELAND
ASSIGNMENT CLERK (CIVIL)
Please see reverse side for additional information

MICHIGAN COURT RULES
Rule 2.116 Summary Disposition.

(A) Judgment on Stipulated Facts.

(1) The parties to a civil action may submit an agreed-upon stipulation of facts to the court.

(2) If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense. A request for dismissal without prejudice under MCL 600.2912c; MSA 27A.2912(3) must be made by motion under MCR 2.116 and MCR 2.119.

(2) A motion under this rule may be filed at any time consistent with subrule (D) and subrule (G)(1), but the hearing on a motion brought by a party asserting a claim shall not take place until at least 28 days after the opposing party was served with the pleading stating the claim.

(C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

(1) The court lacks jurisdiction over the person or property.

(2) The process issued in the action was insufficient.

(3) The service of process was insufficient.

(4) The court lacks jurisdiction of the subject matter.

(5) The party asserting the claim lacks the legal capacity to sue.

(6) Another action has been initiated between the same parties involving the same claim.

(7) The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other

disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

(D) Time To Raise Defenses and Objections. The grounds listed in subrule (C) must be raised as follows:

(1) The grounds listed in subrule (C)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived.

(2) The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading. Amendment of a responsive pleading is governed by MCR 2.118.

(3) The grounds listed in subrule (C)(4), (8), (9), and (10) may be raised at any time.

(E) Consolidation; Successive Motions.

(1) A party may combine in a single motion as many defenses or objections as the party has based on any of the grounds enumerated in this rule.

(2) No defense or objection is waived by being joined with one or more other defenses or objections.

(3) A party may file more than one motion under this rule, subject to the provisions of subrule (F).

(F) Motion or Affidavit Filed in Bad Faith. A party or an attorney found by the court to have filed a motion or an affidavit in violation of the provisions of MCR 2.114 may, in addition to the imposition of other penalties prescribed by that rule, be found guilty of contempt.

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i)a written motion under this rule with supporting brief and any affidavits must be filed and served at least 21 days before the time set for the hearing, and

(ii)any response to the motion (including brief and any affidavits) must be filed and served at least 7 days before the hearing.

(b) If the court sets a different time for filing and serving a motion or a response, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion or response (including brief and any affidavits) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2) Except as to a motion based on subrule (C)(8) or (9), affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the grounds asserted in the motion.

(3) Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required

(a) when the grounds asserted do not appear on the face of the pleadings, or

(b) when judgment is sought based on subrule (C)(10).

(4) A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for

trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

(5) The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).

(6) Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.

(H) Affidavits Unavailable.

(1) A party may show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons
whose affidavits the party cannot procure. The affidavit must

(a) name these persons and state why their testimony cannot be procured, and

(b) state the nature of the probable testimony of these persons and the reason for the party's belief that these persons would testify to those facts.

(2) When this kind of affidavit is filed, the court may enter an appropriate order, including an order

(a) denying the motion, or

(b) allowing additional time to permit the affidavit to be supported by further affidavits, or by depositions, answers to interrogatories, or other discovery.

(I) Disposition by Court; Immediate Trial.

(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

(2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.

(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.

(4) The court may postpone until trial the hearing and decision on a matter involving disputed issues of fact brought before it under this rule.

(5) If the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.

(J) Motion Denied; Case Not Fully Adjudicated on Motion.

(1) If a motion under this rule is denied, or if the decision does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment. The court may:

(a) set the time for further pleadings or amendments required;

(b) examine the evidence before it and, by questioning the attorneys, ascertain what material facts are without substantial controversy, including the extent to which damages are not disputed; and

(c) set the date on which all discovery must be completed.

(2) A party aggrieved by a decision of the court entered under this rule may:

(a) seek interlocutory leave to appeal as provided for by these rules;

(b) claim an immediate appeal as of right if the judgment entered by the court constitutes a final judgment under MCR 2.604(B); or

(c) proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment.

SUPREME COURT OF THE UNITED STATES OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

September 5,

Mr. William T. Luther, 119 N. Centennial , Zeeland, MI 49464

Re:
William T. Luther v. Shane Thorsen
Application No. OIA186

Dear Mr. Luther

AREA CODE 202 479-3011

The application for an extension of time within which to file a petition for a writ of certiorari in the- above-entitled case has been presented to Justice Stevens, who on September 5, 2001, extended the time to and including October 26, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely ,

/s/ Gail B. Johnson

William K. Suter, Clerk By Gail B. Johnson